

CHAPTER 197

GOVERNMENT - STATE

HOUSE BILL 17-1177

BY REPRESENTATIVE(S) Wist and Garnett, Arndt, Becker K., Buckner, Carver, Catlin, Exum, Herod, Hooton, Lee, Melton, Michaelson Jenet, Neville P., Pabon, Ransom, Saine, Salazar, Young; also SENATOR(S) Cooke, Court, Donovan, Gardner, Kefalas, Martinez Humenik, Merrifield, Scott, Tate, Todd.

AN ACT

CONCERNING THE USE OF ALTERNATIVE METHODS OF RESOLVING DISPUTES THAT ARISE UNDER THE "COLORADO OPEN RECORDS ACT".

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 24-72-204, **amend** (5) as follows:

24-72-204. Allowance or denial of inspection - grounds - procedure - appeal - definitions. (5) (a) Except as provided in subsection (5.5) of this section, any person denied the right to inspect any record covered by this part 2 may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why the custodian should not permit the inspection of such record; except that, at least ~~three business~~ ^{FOURTEEN} days prior to filing an application with the district court, the person who has been denied the right to inspect the record shall file a written notice with the custodian who has denied the right to inspect the record informing ~~said~~ ^{THE} custodian that the person intends to file an application with the district court. DURING THE FOURTEEN-DAY PERIOD BEFORE THE PERSON MAY FILE AN APPLICATION WITH THE DISTRICT COURT UNDER THIS SUBSECTION (5)(a), THE CUSTODIAN WHO HAS DENIED THE RIGHT TO INSPECT THE RECORD SHALL EITHER MEET IN PERSON OR COMMUNICATE ON THE TELEPHONE WITH THE PERSON WHO HAS BEEN DENIED ACCESS TO THE RECORD TO DETERMINE IF THE DISPUTE MAY BE RESOLVED WITHOUT FILING AN APPLICATION WITH THE DISTRICT COURT. THE MEETING MAY INCLUDE RECOURSE TO ANY METHOD OF DISPUTE RESOLUTION THAT IS AGREEABLE TO BOTH PARTIES. ANY COMMON EXPENSE NECESSARY TO RESOLVE THE DISPUTE MUST BE APPORTIONED EQUALLY BETWEEN OR AMONG THE PARTIES UNLESS THE PARTIES HAVE AGREED TO A DIFFERENT METHOD OF ALLOCATING THE COSTS BETWEEN OR AMONG THEM. IF THE PERSON WHO HAS BEEN DENIED ACCESS TO INSPECT A RECORD STATES IN THE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

REQUIRED WRITTEN NOTICE TO THE CUSTODIAN THAT THE PERSON NEEDS TO PURSUE ACCESS TO THE RECORD ON AN EXPEDITED BASIS, THE PERSON MUST PROVIDE SUCH WRITTEN NOTICE, INCLUDING A FACTUAL BASIS OF THE EXPEDITED NEED FOR THE RECORD, TO THE CUSTODIAN AT LEAST THREE BUSINESS DAYS PRIOR TO THE DATE ON WHICH THE PERSON FILES THE APPLICATION WITH THE DISTRICT COURT AND, IN SUCH CIRCUMSTANCES, NO MEETING TO DETERMINE IF THE DISPUTE MAY BE RESOLVED WITHOUT FILING AN APPLICATION WITH THE DISTRICT COURT IS REQUIRED.

(b) Hearing on ~~such~~ THE application ~~shall~~ DESCRIBED IN SUBSECTION (5)(a) OF THIS SECTION MUST be held at the earliest practical time. Unless the court finds that the denial of the right of inspection was proper, it shall order the custodian to permit such inspection and shall award court costs and reasonable attorney fees to the prevailing applicant in an amount to be determined by the court; except that no court costs and attorney fees shall be awarded to a person who has filed a lawsuit against a state public body or local public body and who applies to the court for an order pursuant to ~~this subsection (5)~~ SUBSECTION (5)(a) OF THIS SECTION for access to records of the state public body or local public body being sued if the court finds that the records being sought are related to the pending litigation and are discoverable pursuant to chapter 4 of the Colorado rules of civil procedure. In the event the court finds that the denial of the right of inspection was proper, the court shall award court costs and reasonable attorney fees to the custodian if the court finds that the action was frivolous, vexatious, or groundless.

SECTION 2. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to requests for inspections of public records submitted on or after the applicable effective date of this act.

Approved: May 4, 2017